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INFO CHINA POSTS

USDOC FOR NATIONAL COORDINATOR FOR IPR
ENFORCEMENT - CISRAEL
USDOC FOR ITA/OCEA/MCQUEEN
USDOC FOR ITA DAS KASOFF
USDOC PASS USPTO FOR DUDAS, ANTHONY, BOLAND, WU,
TONG
STATE PASS USTR FOR STRATFORD, WINTER, ALTBACH,
ESPINEL, BAE, MCCOY, CELICO
GENEVA PASS USTR
STATE ALSO FOR H
STATE PSS US-CHINA ECONOMIC AND SECURITY REVIEW
COMMISSION
USDOJ FOR CCIPS - ASHARRIN
USDOJ FOR CHEMTOB
FTC FOR BLUMENTHAL
FBI FOR LBRYANT
TDA FOR SCHOW
DHS/ICE FOR IPR CENTER - DFAULCONER
DHS/CBP FOR IPR RIGHTS BRANCH - PPIZZECK

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TAGS: [ETRD](#) [KIPR](#) [EIND](#) [PREL](#) [WTRO](#) [CH](#)
SUBJECT: CHINA/IPR: U.S.-CHINA ECONOMIC AND
SECURITY REVIEW COMMISSION EXPRESSES CONCERNS TO
MOFCOM

¶1. (SBU) Summary: In an April 23 meeting with the U.S.-China Economic and Security Review Commission (USCC) that focused on the state of IPR protections in China, Ministry of Commerce (MOFCOM) North American Affairs Deputy Director General Jin Xu told USCC Chairwoman Carolyn Bartholomew and other delegation members that China continues to take IPR matters seriously and has made more progress in recent years in areas such as education and enforcement. Jin pointed to efforts by MOFCOM's IPR Working Group, including its annual release of Action Plans on IPR Protection, as evidence that China is making real progress. Repeating official positions, Jin noted that China's IPR situation is not unique in the world and that others should look at the structure of China's judicial system to understand how China's IPR enforcement worked. MOFCOM Fair Trade Bureau Office Director Liu Danyang raised the issue of the United States Department of Commerce's countervailing duty assessment against certain Chinese paper manufacturers, calling it a form of discrimination stemming from a miscalculation by the Department of Commerce. USCC delegation members urged Jin to recognize that, despite China's claims of progress, United States businesses continue to complain about a lack of improvement in China's IPR environment and that

there are growing concerns about China's decision to create categories of state-supported pillar industries. End Summary.

MOFCOM Claims IPR Progress,
But Gives Few Examples

12. (SBU) In an April 23 meeting with the U.S.-China Economic and Security Review Commission (USCC), Ministry of Commerce North American Affairs Deputy Director General Jin Xu said that China continues to take IPR matters seriously and has made more progress in recent years in areas such as education and enforcement. China's annual March 15 Consumer Rights Protection Day and a 2006 conference in Xiamen to solicit IPR feedback from the international business community and Chinese provincial governors are examples of how China continues to improve its IPR environment. As further evidence of China's efforts, MOFCOM IPR Working Group's Chou Zhongyi cited the release of the 2007 Action Plan on IPR Protection which covered 276 measures over 10 issue areas, larger than the 2006 IPR Action Plan which contained only 160 measures. When asked for additional examples of recent IPR progress, however, Chou did not give any further information and instead referred the delegation to the 2007 Action Plan web site for more information.

13. (SBU) In response to a USCC question on how China would manage innovation and patent policy as the country developed further, Chou said that

China is working on measures as part of President Hu Jintao's plan for China to become an innovative country by 2020. China held a technology innovation conference in January 2006 to address these very issues, and Chou affirmed that the concept of IPR-protected innovation is fundamental to China's plans. Chou also acknowledged that, according to Chinese patent law, those who invest resources in a discovery are the owners of the patent. The purpose of measures that support innovation is to guarantee the patent ownership incentive.

Only General Explanations
For China's IPR System

14. (SBU) Asked specifically what mechanisms MOFCOM uses to bring IPR problems to the attention of the China's legislating bodies, DDG Jin said that the IPR Working Group under the leadership of Vice Premier Wu Yi cooperates closely with 30 different Chinese government offices to develop practical approaches and make laws more effective. Jin noted that China now has tens of thousands of people in government working on IPR enforcement, and it is important for others to understand that China uses both administrative measures and criminal enforcement as tools in IPR protection.

15. (SBU) USCC Commissioner Richard D'Amato recalled that a Chinese IPR analyst had once recommended that China create an intermediate level court of appeals specifically to address IPR cases whose hearings would otherwise be delayed by backlogs in higher courts. MOFCOM Fair Trade Bureau's Liu Danyang said that the idea should be discussed with the courts

themselves, and he questioned what jurisdictions such a court would cover. IPR Working Group's Chou added that China's judicial system already has gone to two thousand judges specializing in IPR issues. Furthermore, he said, although China does not have dedicated courts for IPR, there are divisions in the judicial system that already cover those issues.

16. (SBU) USCC Commissioner Jeffrey Fiedler encouraged the Chinese delegation to consider that the politics in the IPR dispute between the United States and China are real, and suggested that Chinese officials not be too outwardly sensitive that certain groups in the United States may seem unaware of the full scope of China's efforts on the IPR front. Regardless of China's efforts, losing money and jobs due to IPR violations in China is still likely to upset United States businesses, and many in the United States thought that the USTR's WTO complaint against China's IPR violations did not go far enough. Delegation members also expressed concern that the creation of pillar industry categories in China is causing heightened concern

about subsidies for Chinese firms and how those firms behave internationally. Jin answered that the creation of pillar industries is a result of China's changing economy and a new focus on energy and infrastructure. China, he said, is even looking to develop domestic manufacturing capacity in specific sectors like aviation that could lead to export opportunities.

MOFCOM Upset by USTR's WTO Filings
and Commerce CVD Determination

17. (SBU) On the issue of USTR's filing of a WTO case against China for IPR violations, MOFCOM IPR Working Group's Chou said China was disturbed and regretted USTR's action. China understands that IPR is a necessity of development, but pressure from the United States and EU is not the right way to achieve progress. Jin later told the delegation that China needs its American friends to tell the United States people and policymakers about China's progress in IPR.

18. (SBU) On the issue of the Department of Commerce's preliminary find of countervailing duties (CVD) on coated free sheet paper from China, Fair Trade Bureau Office Director Liu said that the United States has misunderstood subsidies in China. Every country has some subsidies, he said, some of which are even allowed by the WTO. Liu insisted that China does not have as many subsidies as the United States presumed. Citing the example of four previous CVD complaints from Canada, Liu said that three cases were determined not to have subsidies, and in the one case where a subsidy was determined to exist, it was small, only 3-5 percent. In this coated paper case, Liu said, the Department of Commerce used a surrogate benchmark on the loan rate to calculate the subsidy, which was the wrong methodology to use and resulted in double-counting. This determination, which Liu called a form of discrimination, was unfair to Chinese companies and is having negative effects on Chinese industry. He urged USCC to play a role in talking with the Department of Commerce to find a way out of this legal issue. Both sides should seek to increase the benefits of the

relationship, he said, not make more problems.

Meeting Participants

¶9. (U) United States Participants:

Carolyn Bartholomew, Chairwoman, USCC
Daniel Blumenthal, Vice Chairman, USCC
¶C. Richard DQAmato, Commissioner, USCC
Jeffrey Fiedler, Commissioner, USCC
Kerri Houston, Commissioner, USCC
Larry M. Wortzel, Commissioner
Marta McLellen, Analyst, USCC
Dante Paradiso, Embassy Beijing Political Officer
Michael Pignatello, Embassy Beijing Economic

Officer (note taker)

¶10. (U) Chinese Participants:

Jin Xu, Deputy Director General, North American
Affairs, Ministry of Commerce
Chou Zhongyi, Officer, IPR Working Group,
Ministry of Commerce
Liu Danyang, Office Director, Fair Trade Bureau,
Ministry of Commerce
Tan Yuwei, Assistant, North American Affairs,
Ministry of Commerce
Gong Rui, Assistant, North American Affairs,
Ministry of Commerce

¶11. (U) The USCC delegation has cleared this
report.

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